

EXHIBIT C

Deposition of David Winston, MD, PhD
Cutler v Pima County et al.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ROBERT STEVEN CUTLER, individually)
and as Administrator of the ESTATE)
of DAVID A. CUTLER, deceased, on)
behalf of himself and on behalf of)
all beneficiaries of the ESTATE OF)
DAVID A. CUTLER, deceased, and)
RENEE LUDDINGTON CUTLER,)

Plaintiffs,)

vs.)

NO. CV-19-00383
TUC-FRZ

MARK D. NAPIER, SHERIFF OF PIMA)
COUNTY, ARIZONA, in his official)
capacity; RURAL METRO FIRE DEPT.,)
INC., an Arizona for profit)
corporation, KEITH BARNES and JANE)
DOE BARNES, his spouse, GRANT REED)
and BRITTANY REED,)

Defendants.)
_____)

DEPOSITION OF
DAVID WINSTON MD PhD.

August 15, 2019

1:05 P.M.

Colville & Dippel
1309 E. Broadway Boulevard
Tucson, AZ 85719-5824

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1 **A. Correct.**

2 Q. The interaction, the way LSD works on the body,
3 or any narcotic works on the body, a toxicologist is going
4 to have -- you would defer to a toxicologist's opinions in
5 that matter, would you not?

6 **A. Yeah, I would.**

7 Q. In terms of LSD and the effect on the temperature
8 of the body, are you aware of the relationship between the
9 amount of LSD taken and the effect on the temperature of
10 the body?

11 **A. I believe the lower the dose is, the less likely**
12 **the temperature will rise.**

13 Q. And a small dose is going to have a very small
14 rise in temperature, correct?

15 **A. More than likely, yes.**

16 Q. And, again, that's something that you'd refer to
17 a toxicologist on, correct?

18 **A. Yeah. Well, we would have to know the dose he**
19 **took, which is a big issue question here.**

20 Q. Right. And there's actually a lot of questions
21 about the LSD. You don't know the amount he took,
22 correct?

23 **A. Correct.**

24 Q. That's unknowable.

25 **A. Right.**

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1 Q. The time he took it is unknowable, correct?

2 A. Correct.

3 Q. The length of time that the LSD would have been
4 psychotropically active is unknowable, correct?

5 A. Yes.

6 Q. It's generally considered to be four to
7 six hours, correct?

8 A. Yeah.

9 Q. And if he took the dose at midnight, that would
10 suggest that it was psychotropically active until about
11 4:00 a.m. to 6:00 a.m., correct?

12 A. Yes.

13 Q. You also -- we also don't know how he tolerated
14 drugs, the tolerance that you were talking about earlier
15 today, correct?

16 A. Yes.

17 Q. And we don't know the -- I hate to use this word,
18 but the quality of the LSD, how -- whether it was pure
19 pharmaceutical grade or whether it was more of a street
20 drug that he took, correct?

21 A. Correct.

22 Q. And all of those factors that we don't know
23 would -- are significant to how the LSD was acting on his
24 body at any point in time on the day he died, correct?

25 A. Yes.

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1 Q. And in this one, you first list LSD toxicity as
2 the pathological diagnosis of death, correct?

3 A. Yes.

4 Q. And then you list hyperthermia, correct?

5 A. Yes.

6 Q. Is the order there an expression of anything or
7 is it simply just the order you listed it in?

8 A. Well, in this case, because initially I thought
9 LSD was the main cause of death, I put LSD number one, and
10 then I put hyperthermia number two because I thought it
11 was contributing, the exposure to the environment.

12 Q. And then when you reversed -- when you changed
13 your opinion -- excuse me -- what then are you expressing
14 or correcting from this first opinion?

15 A. Well, the main difference is the main cause of
16 death is hyperthermia, and then I put LSD and the exposure
17 to environment underneath that, saying both of those
18 contributed. I don't know how much the hyperthermic side
19 effect of LSD contributed to his death, nor do I know to
20 what percent the exposure to the elements caused it. I
21 think both of them did. Was it 50/50? Was it 75/25? I
22 don't know.

23 Q. Or is it 99 and 1 percent, correct?

24 A. Exactly.

25 Q. And when you made the expression the first time,

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1 the death in the first autopsy report, all the information
2 that you don't know about the LSD use, you didn't know it
3 then, correct?

4 **A. Correct.**

5 Q. And when you made the second report, you didn't
6 have the information then, correct?

7 **A. Correct.**

8 Q. And so when you made both reports, it is at least
9 possible that he was not -- that Dave was not feeling any
10 psychotropic effects from LSD, correct?

11 **A. Yes.**

12 Q. And it's possible that his body temperature was
13 not raised at all from LSD, correct?

14 **A. Yes.**

15 Q. Do you have an understanding of the -- of where
16 on the detectability scale the .12 nanograms per
17 milliliter of blood is per the toxicology result?

18 **A. No.**

19 Q. Is it possible it's near the -- I'll strike that.
20 Did you do any investigation into the actions of the
21 EMTs -- the paramedics, rather, at the scene of David's
22 death?

23 **A. Well, I read their timeline.**

24 Q. Anything other than that?

25 **A. No. I did not talk to any of the EMS.**

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1 BY MR. ZWILLINGER:

2 Q. If you -- strike that. If David had not had LSD
3 in his system, was the hyperthermic injury to his body
4 sufficient to kill him?

5 MR. AUDILETT: Form.

6 THE WITNESS: I don't know. I can't answer
7 that question.

8 BY MR. ZWILLINGER:

9 Q. Why?

10 A. Well, I think it's really not fair to pull one
11 thing out and say, you know, would this person still be
12 alive today. And I just -- I have to deal with everything
13 I have, you know. So I just --

14 Q. You don't know how much the LSD --

15 A. I don't know how much the LSD contributed to his
16 hyperthermia.

17 Q. Okay. So it's -- we talked earlier, it's
18 possible LSD contributed 1 percent, correct?

19 A. Yes.

20 MR. REYNOLDS: Object to form.

21 BY MR. ZWILLINGER:

22 Q. And it's possible the hyperthermia was
23 99 percent, correct?

24 A. Yes.

25 Q. In terms of weight loss, Dr. Cutler related to

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1 are people still going to have, though, reactions to pain?

2 **A. Yeah, because that's more of a reflex.**

3 Q. And when you talk about contractions and spasms,
4 those could include the extremities, the legs and arms,
5 correct?

6 **A. Yes.**

7 MR. ZWILLINGER: No further questions.

8 MR. AUDILETT: Do you want to read this?

9 THE WITNESS: Not at all.

10 MR. AUDILETT: We don't have a trial date
11 set, but it will probably happen in a year or so. You're
12 not going anywhere, are you? You're not retiring and
13 moving to Alaska or anything.

14 THE WITNESS: I might now.
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CERTIFICATE OF REPORTER

STATE OF ARIZONA)
) ss:
COUNTY OF PIMA)

I, CINDY BENNER, a Certified Reporter in the State of Arizona, do hereby certify that the foregoing deposition was taken before me in the County of Pima, State of Arizona; that an oath or affirmation was duly administered by me to the witness, DR. DAVID WINSTON, pursuant to A.R.S. 41-324(B); that the questions propounded to the witness and the answers of the witness thereto were taken down by me in shorthand and thereafter reduced to typewriting; that the transcript is a full, true, and accurate record of the proceeding, all done to the best of my skill and ability; that the preparation, production and distribution of the transcript and copies of the transcript comply with the Arizona Revised Statutes and ACJA 7-206(F)(3); ACJA 7-206 J(1)(g)(1) and (2); and ACJA 7-206 J(3)(b).

I FURTHER CERTIFY that I am in no way related to any of the parties, nor am I in any way interested in the outcome hereof.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Pima, State of Arizona, this 21st day of August 2019.



CINDY BENNER, RMR, CR NO. 50319

I certify that Colville & Dippel, LLC, has complied with the ethical obligations set forth in ACJA 7-206(J)(1)(g)(1) through (6).



COLVILLE & DIPPEL, LLC, RRF No. 1129